Sibu Slipway Sdn Bhd v Yii Chee Ming & Ors and other appeals

A

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS B-02(NCC)(A)-628–04 OF 2016, B-02(NCC)(A)-629–04 OF 2016 AND B-02(NCC)(A)-630–04 OF 2016

B

ALIZATUL KHAIR, NALLINI PATHMANATHAN AND ZABARIAH MOHD YUSOF JJCA

26 AUGUST 2016

C

Companies and Corporations — Winding up — Stay of order — Petitioners obtained winding up orders — Applicants sought to stay winding up orders — Trial court allowed stay application — Whether winding up orders obtained by concealment of material facts — Whether concealment amounted to abuse of process of court — Whether court could invoke inherent jurisdiction to set aside or rescind or grant permanent stay of winding up orders — Companies Act 1965 s 243(1) — Companies (Winding-Up) Rules 1972

D

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The disputes between the first and second respondents ('the respondents') on one part; and Dato' Yu Chee Hoe and Tony Yu Yuong Wee ('the appellants') on the other part in relation to the sharing of family assets and companies between the brothers had led to nine court proceedings in the Kuching High Court which includes a proceeding for ownership of shares in a company known as Sibu Slipway Sdn Bhd ('Sibu Slipway'). There was also a proceeding in the Kuching High Court in relation to the respondents' application for preservation order to preserve one third shares of two companies known as Lambang Sinar Mas Sdn Bhd and Ensengei Palm Oil Sdn Bhd which were subsidiaries of Sibu Slipway from dissipations by the appellants. As event unfolded, the appellants had transferred the registered office of the three companies to Shah Alam and obtained winding up orders against the three companies pending the disposal of all the proceedings in Kuching High Court. Consequently, the respondents applied for stay of the winding up orders pursuant to s 243(1) of the Companies Act 1965 ('the Act') and alternatively they invoked the inherent jurisdiction of the court to grant permanent stay. The trial court granted the respondents' application for permanent stay under s 243(1) of the Act on the ground that the appellants had suppressed and concealed material facts with regard to the beneficial ownership of the shares and assets in the three companies and with regards to the proceedings in the Kuching High Court. Dissatisfied with the decision, the appellants filed the present appeal. The issue for determination was whether the court could invoke its inherent jurisdiction to set aside or rescind or grant a permanent stay of the winding up orders.

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Held, dismissing the appeal and vary the order of the High Court:

(1) There was active concealment and/or suppression of material facts to the Shah Alam High Court with regards to the respondents' claim to a beneficial interest in the shareholding and assets of the three companies; the existence of pending proceedings in the Kuching High Court; and the existence of an inter partes preservation of assets application before the Kuching High Court. There was also failure to disclose to the Kuching High Court that the appellants had changed the registered office of the three companies from Kuching to Kuala Lumpur, and were in the process to wound up the companies. The failures cumulatively amounted to an abuse of process of court (see paras 18–20).

(2) The lack of express statutory provisions in the Act and the Companies (Winding-Up) Rules 1972 did not affect the inherent jurisdiction of the court to intervene and provide redress even in respect of a winding up order that had been perfected and sealed. The fundamental position in law was recognised, namely that the court always retains a residuary power in its inherent capacity to intervene and remedy wrongs, particularly when there is an abuse of process. In the circumstances, the court did retain the inherent jurisdiction to permanently stay the winding up orders made by the Shah Alam High Court. The court granted permanent stay under the inherent jurisdiction rather than under s 243(1) of the Act as ordered by the High Court (see paras 32–33, 36 & 39).

[Bahasa Malaysia summary

Pertikaian di antara responden pertama dan kedua ('responden-responden') di sebelah pihak; dan Dato' Yu Chee Hoe dan Tony Yu Yuong Wee ('perayu-perayu') di sebelah pihak yang lain adalah berkaitan kepada perkongsian aset keluarga dan syarikat-syarikat di antara saudara-saudara lelaki telah membawa kepada sembilan prosiding mahkamah di Mahkamah Tinggi Kuching yang mana melibatkan prosiding untuk pemilikan saham dalam syarikat yang dikenali sebagai Sibu Slipway Sdn Bhd ('Sibu Slipway'). Juga terdapat prosiding di Mahkamah Tinggi Kuching berkaitan kepada permohonan responden-responden untuk perintah penyimpanan untuk menyimpan satu pertiga saham-saham daripada dua syarikat yang dikenali sebagai Lambang Sinar Mas Sdn Bhd dan Ensengei Palm Oil Sdn Bhd yang mana adalah subsidiari-subsidiari Sibu Slipway daripada pelesapan oleh perayu-perayu. Kemudiannya, perayu-perayu telah memindahkan pejabat berdaftar ketiga-tiga syarikat ke Shah Alam dan memperolehi perintah penggulungan terhadap ketiga-tiga syarikat sementara menunggu pendengaran kesemua prosiding di Mahkamah Tinggi Kuching. Akhirnya, responden-responden memohon untuk penangguhan perintah penggulungan berikutan s 243(1) Akta Syarikat 1965 ('Akta') dan secara alternatif mereka membangkitkan bidang kuasa inheren mahkamah untuk memberikan

penangguhan kekal. Mahkamah perbicaraan membenarkan permohonan responden-responden bagi penangguhan kekal di bawah s 243(1) Akta atas alasan bahawa perayu-perayu menahan dan menyembunyikan fakta material berkaitan pemilikan saham dan aset di dalam ketiga-tiga syarikat dan berkaitan kepada prosiding di Mahkamah Tingggi Kuching. Tidak puas hati dengan keputusan, perayu-perayu memfailkan rayuan ini. Isu untuk penentuan adalah sama ada mahkamah boleh membangkitkan bidang kuasa inherennya untuk mengetepikan atau membatalkan atau membenarkan penangguhan kekal perintah-perintah penggulungan.

Diputuskan, menolak rayuan dan mengubah perintah Mahkamah Tinggi:

(1) Terdapat penyembunyian dan/atau penahanan aktif fakta material kepada Mahkamah Tinggi Shah Alam berkenaan tuntutan responden-responden kepada faedah benefisial dalam pegangan saham dan aset ketiga-tiga syarikat tersebut; kewujudan prosiding yang belum didengar di Mahkamah Tinggi Kuching; dan kewujudan penyimpanan inter partes permohonan aset di hadapan Mahkamah Tinggi Kuching. Juga terdapat kegagalan untuk mendedahkan kepada Mahkamah Tinggi Kuching bahawa perayu-perayu telah menukarkan pejabat berdaftar ketiga-tiga syarikat daripada Kuching ke Kuala Lumpur, dan dalam proses untuk mengggulung syarikat-syarikat. Kegagalan secara kumulatif merupakan penyalahgunaan proses mahkamah (lihat perenggan 18–20).

(2) Ketiadaan peruntukan statutori nyata di dalam Akta dan Kaedah-Kaedah (Penggulungan) Syarikat 1972 tidak menjejaskan bidang kuasa inheren mahkamah untuk campur tangan dan memperuntukkan pembetulan walaupun berkenaan perintah penggulungan yang telah disempurnakan dan dimeterai. Kedudukan asas dari segi undang-undang diterima, iaitu bahawa mahkamah selalu mengekalkan kuasa residuari dalam kapasiti inherennya untuk campur tangan dan meremedikan kesalahan, terutamanya apabila terdapat penyalahgunaan proses. Dalam keadaan, mahkamah telah mengekalkan bidang kuasa inheren untuk menangguhkan secara kekal perintah-perintah pengggulungan yang dibuat oleh Mahkamah Tinggi Shah Alam. Mahkamah membenarkan penangguhan kekal di bawah bidang kuasa inheren dan bukan di bawah s 243(1) Akta seperti yang diperintahkan oleh Mahkamah Tinggi (lihat perenggan 32–33, 36 & 39).]

Notes

For cases on stay of order, see 3(1) *Mallal's Digest* (5th Ed, 2015) paras 1970–1986.

Cases referred to

Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd [1998] 1 MLJ 393; [1998] 2 CLJ 75, FC (refd)

Bambi Restaurants Ltd, Re [1965] 2 All ER 79, Ch D (refd)
Garage Door Associates Ltd, Re [1984] 1 All ER 434, Ch D (refd)
Jasa Keramat Sdn Bhd & Anor v Monatech (M) Sdn Bhd [1999] 4 MLJ 637; [1999] 4 CLJ 533, CA (folld)
JN2 Ltd, Re [1978] 1 WLR 183, Ch D (refd)
Megah Teknik Sdn Bhd v Miracle Resources Sdn Bhd [2010] 4 MLJ 651; [2010] 6 CLJ 745, CA (refd)
Panaron Sdn Bhd v Univac Switchgear Sdn Bhd [2015] 9 MLJ 498; [2015] 2 CLJ 286, HC (refd)

Legislation referred to

Companies Act 1965 s 243(1)
Companies (Winding-Up) Rules 1972

Appeal from: Winding-Up Petition No 28CC-400–08 of 2015 (High Court, Shah Alam)

Malik Imtiaz Sarwar (Siva Ganish and Surendra Ananth with him) (Markiman & Assoc) in Civil Appeal Nos B-02(NCC)(A)-628–04 of 2016, B-02(NCC)(A)-629–04 of 2016 and B-02(NCC)(A)-630–04 of 2016 for the appellant.
Gopal Sri Ram (CK Lim and David with him) (Chooi, Saw & Lim) in Civil Appeal Nos B-02(NCC)(A)-628–04 of 2016, B-02(NCC)(A)-629–04 of 2016 and B-02(NCC)(A)-630–04 of 2016 for the first and second respondents.
Shamesh Jeevaretnam (Jeevaretnam & Co) in Civil Appeal No B-02(NCC)(A)-630–04 of 2016 for the third respondent.

Nallini Pathmanathan JCA:

INTRODUCTION

[1] There are nine sets of court proceedings currently being jointly tried in the High Court of Sabah and Sarawak at Kuching ('the Kuching High Court'). They relate to the Yii/Yu family that comprises six brothers (two of whom are deceased). The full factual matrix has been set out in the first and second respondents' chronology of facts. Their family business empire has more than thirty companies. Three of the companies that are alleged to comprise a part of the family companies include Sibu Slipway Sdn Bhd and its two fully owned subsidiaries namely Lambang Sinar Mas Sdn Bhd and Ensengei Palm Oil Mill Sdn Bhd ('the three companies'). These three companies comprise the subject matter of the appeals before us.

SALIENT FACTS

[2] There have been disputes between the first and second respondents on the one part and Dato' Yu Chee Hoe and Tony Yu Yuong Wee on the other part in relation to the sharing of the family assets and companies between the brothers. This has led to the nine court proceedings that are being jointly tried as mentioned earlier. Of these nine suits, Civil Suit No KCH-22NCVC-16/3 of 2014 ('the 16/3 Suit') is a suit between Dato' Yu Chee Hoe, Tony Yu Yuong Wee and the three companies on the one part ('the plaintiffs in the 16/3 Suit') and the first and second respondents on the other part.

[3] In the 16/3 Suit, Tony Yu Yuong Wee sought a declaration that he was the legal and beneficial owner of one share in Sibu Slipway Sdn Bhd registered in his name. The first and second respondents filed counterclaims on the grounds that these three companies are and were at all material times part of the Yii/Yu family companies and, more pertinently, that Dato' Yu Chee Hoe and Tony Yu Young Wee are holding the shares in the three companies on trust for all the Yii/Yu brothers.

[4] Pending the trial of some of the other suits, the Kuching High Court allowed ex parte applications taken out by the first respondent and his brother-in-law for injunctions to preserve the shares of two other companies, namely one Megapron Engineering Sdn Bhd and one Megakina Shipping Sdn Bhd. These injunctions were affirmed inter partes by the High Court on 19 November 2014, and the High Court's decision was affirmed by this court on 25 June 2015.

[5] On 19 November 2014 when these orders were affirmed inter partes, the Kuching High Court further ordered that all nine suits be heard jointly.

[6] Shortly before the commencement of these joint trials, the first and second respondents became aware that Dato' Yu Chee Hoe and Tony Yu Yuong Wee had realised the assets of Lambang Sinar Mas Sdn Bhd and Ensengei Palm Oil Mill Sdn Bhd to Koperasi Permodalan Felda Malaysia Bhd for a consideration totalling RM60m (RM5m for Lambang Sinar Mas Sdn Bhd, RM55m for Ensengei Palm Oil Mill Sdn Bhd). The first and second respondents were concerned about a potential dissipation of these monies and sought to obtain an order for the preservation of a one third share of the net proceeds of the sale.

[7] This application for a preservation order in Suit No KCH-22NCVC-16/3 of 2014 was fixed for hearing on 13 July 2015 but rescheduled to 21 September 2015. On that date, the first and second respondents' advocate was ready to proceed with the hearing of the application.

However, the advocate for the plaintiffs in the 16/3 Suit requested for an adjournment on the grounds that the plaintiffs intended to file an affidavit in relation to the status of the three companies. The status of the three companies was not disclosed to the Kuching High Court at the time the adjournment was sought. However, it was stressed that the status of these companies was very material to the hearing of the application for a preservation order. The hearing was then adjourned to 25 September 2015.

[8] On 25 September 2015, the advocate for the plaintiffs in the 16/3 Suit sought a further adjournment till the afternoon. The advocate then served an affidavit that stated that three companies had been wound up by the High Court in Shah Alam on 18 September 2015. This was the first time that the respondents were made aware of the winding up of these three companies. The three companies had always had their registered address in Kuching until less than a month prior to the filing of the winding up petitions. But they found that the registered addresses of these three companies had been moved to Shah Alam approximately a month prior to the presentation of the three winding up petitions.

[9] Having produced these orders evidencing the fact that the three companies were wound up, the advocate then submitted that the Kuching High Court had no jurisdiction to hear or determine the application for a preservation of the assets. The application therefore could not proceed to be heard and determined by the Kuching High Court.

[10] The joint trial of the nine suits was also aborted/delayed by the winding up of the three companies.

[11] It is not in dispute that no disclosure was made to the Shah Alam High Court of:

(a) the application for a preservation order in relation to the sales proceeds of the two subsidiaries of Sibu Slipway Sdn Bhd;

(b) the basis for such claim, namely that the respondents contended that Dato' Yu Chee Hoe and Tony Yu Yuong Wee were holding the shares in these companies on trust for all the brothers; and

(c) the joint trial of the nine suits in the Kuching High Court.

THE PARTIES' SUBMISSIONS ON THE FACTUAL MATRIX

[12] The respondents maintain that it is not only non-disclosure but active suppression or concealment of highly material facts. They have termed it fraudulent and/or intentional concealment of material facts by the petitioner presenting the winding up petition. In relation to the holding company, Sibu

Slipway Sdn Bhd, Dato' Yu Chee Hoe and Tony Yu Yuong Wee were the petitioners. They are the registered shareholders of Sibu Slipway (Tony Yu is the administrator for his late father's estate and hence is a registered shareholder on behalf of the estate).

[13] The appellants on the other hand maintain that they have acted well within the purview of the law in moving the registered addresses of these companies and subsequently winding them up. They maintain that these companies were wound up because the substratum of the companies no longer existed. They further state that they have complied fully with the legal requirements for the presentation of these winding up petitions. In short they deny any form of wrongdoing. They maintain that they have a legitimate right to wind up these companies as they are the registered shareholders. The respondents, they maintain, have no rights unless and until the Kuching High Court finds in their favour.

[14] The appellants also contend that the change of registered address of the three companies was necessitated as the liquidator resided in Selangor, and that accordingly nothing sinister is to be inferred from such change of address.

THE DECISION OF THE HIGH COURT

[15] The respondents then filed an application in the Shah Alam High Court under the winding up petitions for a permanent stay of the winding up orders, pursuant to s 243(1) of the Companies Act 1965 ('the Act'). Alternatively, they invoked the inherent jurisdiction of the court to grant a permanent stay.

[16] The learned High Court judge concluded that the petitioners in these winding up proceedings had suppressed and concealed material facts with regard to the beneficial ownership of the shares and assets in these three companies. His Lordship further found that the petitioners had deliberately transferred the registered office of the three companies to Shah Alam with the intention of defeating the ongoing proceedings in the Kuching High Court. He further found that the act of filing the three suits within a month after the change of registered office of the three companies from Kuching to Shah Alam substantiated his finding. Furthermore the petitioner's address is in Kuching. Finally he found that the factual matrix clearly showed that the petitions were filed in a rush to obtain the winding up orders in Shah Alam without disclosing the proceedings in the Kuching High Court which have a direct nexus.

[17] In view of his findings, the learned judge granted the respondents' application for a permanent stay under s 243(1) of the Act.

ANALYSIS BY THE COURT OF APPEAL

[18] It must be said at the outset that we agree with the findings of the learned High Court judge. There appears to be no reason to interfere with his findings in relation to the factual matrix of the case. In short we concur that there was active concealment and/or suppression of material facts to the Shah Alam High Court with regards to:

(a) the respondents' claim to a beneficial interest in the shareholding and assets of the three companies in Suit 16/3 in the Kuching High Court;

(b) the existence of pending proceedings in the Kuching High Court including 16/3, which had been ordered to be tried jointly; and

(c) the existence of an inter partes preservation of assets application before the Kuching High Court, involving the three companies. Further, that the preservation order was sought by the respondents and was disputed by the appellants.

[19] There was a further failure to disclose to the Kuching High Court that the appellants had changed the registered office of the three companies from Kuching to Shah Alam, and were in the process of winding up these three companies in Shah Alam. This would have had a material effect on the preservation application as it went to the issue of jurisdiction.

[20] To our minds the foregoing failures, particularly when viewed cumulatively, amounted to an abuse of process of the court.

[21] Before us at the hearing of the appeal, the thrust of the submissions by both counsel for the appellants and the respondents centred around the issues of:

(a) the proper definition to be accorded to a 'contributory' under the Act; and

(b) the proper or valid application of s 243(1) of the Act for the granting of a permanent stay.

[22] We were however, of the view that since we concurred with the learned High Court judge that the factual matrix of this case amounted to an abuse of process of the court, the pertinent issue before us was whether the court could invoke its inherent jurisdiction to set aside, rescind or grant a permanent stay of the three winding up petitions.

[23] The issue of material non-disclosure or suppression of material facts in the course of court proceedings is of fundamental importance in the

administration of justice. It is not possible for this court to gloss over facts that disclose deliberate attempts to mislead the court into granting the winding up orders. Apart from causing prejudice to the respondents, and breaching the rules of natural justice, these acts or omissions amount to an abuse of process of the court.

[24] The concept of an abuse of the court's process is aptly set out in the case of *Jasa Keramat Sdn Bhd & Anor v Monatech (M) Sdn Bhd* [1999] 4 MLJ 637; [1999] 4 CLJ 533 ('Jasa Keramat'). In that case Gopal Sri Ram JCA (as he then was) explained it as follows:

> It is trite that a person who has a legitimate grievance may invoke the court's process to obtain redress. But cases may arise where the true purpose for invoking the court's process is something other than to obtain a remedy provided by law. It may be to oppress a defendant. Or it may be to apply pressure upon him which the law regards as illegitimate. Or it may be to merely commence an action and let it hang over the head of the defendant with no intention of bringing it to a conclusion ...
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> ... Since the circumstances in which the court's process may be abused are varied and numerous, the categories of such cases are therefore not closed. Whether the institution of an action or its continuation or a step taken therein amounts to an abuse of process depends on particular and individual circumstances. Where an action is found to be an abuse of the court's process, it may be struck out or stayed. If it is too late to do this, the party aggrieved may bring an action based upon the tort of abuse of process ...
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> ... The position has been neatly summed up by Lord Denning MR in his dissenting judgment in *Goldsmith v Sperrings Ltd & Ors* [1977] 1 WLR 478, where at p 489 he said:
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> > In a civilised society, legal process is the machinery for keeping and doing justice. It can be used properly or it can be abused. It is used properly when it is invoked for the vindication of men's rights or the enforcement of just claims. It is abused when it is diverted from its true course so as to serve extortion or oppression or to exert pressure so as to achieve an improper end. When it is so abused, it is a tort, a wrong known to the law. The judges can and will intervene to stop it. They will stay the legal process, if they can, before any harm is done. If they cannot stop it in time, and harm is done, they will give damages against the wrongdoer.
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> Though a dissenting judgment, the principle enunciated by the Master of the Rolls has been accepted as authoritative of what constitutes an abuse of process ...
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> ... It is plainly an abuse of the court's process where relief at law or in equity is used, not the remedy a genuine grievance, but as an instrument of oppression. There have been instances before our courts where an interlocutory injunction has been found to have been used as an instrument of oppression. We have always intervened in such cases and set the matter right.

[25] The foregoing paragraphs explain succinctly the definition of an abuse of process of the court. Applied to the facts of our case, as stated earlier, it is

clear that the winding up petitions were filed for a collateral purpose, namely to frustrate firstly, the application for a preservation of assets in Suit 16/3, and secondly, the joint trial of the nine suits in the Kuching High Court.

[26] What are the remedies available to this court? It is apparent from the case-law cited above that the court retains an inherent jurisdiction to intervene and set right or remedy the wrong that has occurred.

[27] However, learned counsel for the appellant submitted that this court had no inherent jurisdiction to remedy the abuse of process (although they denied that it amounted to an abuse of process) because these were petitions to wind up three companies, and there was no provision in the Act to set aside or rescind a winding up order after it had been perfected.

[28] We agree that this would be the general position in law. However what is to be done when the provisions of the Act are utilised for a collateral purpose or with ulterior motive, in an attempt to frustrate or defeat pending proceedings?

[29] It is evident from the factual matrix that the respondents were not in a position to appeal against these orders as they were out of time. They took the other option of filing an application for a permanent stay either under s 243(1) or the inherent jurisdiction of the court.

[30] Therefore the issue for consideration is whether this court retains an inherent jurisdiction to set aside or rescind or stay winding up orders which have been obtained in circumstances amounting to an abuse of process of the court, given that these proceedings are determined under the Act and the Companies (Winding-Up) Rules 1972 ('the Rules'). The Act and the Rules make no provision for setting aside or rescinding a winding up order. Does it follow therefore that this court has no inherent jurisdiction to intervene?

[31] We conclude that this court has the inherent jurisdiction to intervene and set right or remedy an abuse of process in winding up proceedings, notwithstanding the lack of an express provision in the Act. In the case of *Megah Teknik Sdn Bhd v Miracle Resources Sdn Bhd* [2010] 4 MLJ 651; [2010] 6 CLJ 745 ('Megah Teknik') this Court recognised, albeit by way of obiter, that the winding up court has inherent jurisdiction. At para 25 of the judgment, Abu Samah Nordin JCA (now FCJ) stated, inter alia, as follows:

> [25] There is no express provision in the Companies Act 1965 or the Companies (Winding-Up) Rules 1972 similar to r 7.47(1) of the Insolvency Rules 1986. In the United Kingdom, before the Insolvency Rules 1986 came into force a winding up order could not be rescinded after it had been drawn up. The only remedy was to apply for a stay: ... or appeal ...

> Until a similar provision is introduced into our Companies Act 1965 or Companies (Winding-Up) Rules 1972 we are of the considered view that a winding up which has been perfected and duly sealed cannot be set aside or rescinded *save in those circumstances where the court may exercise its inherent jurisdiction* ... (Emphasis added.)

[32] Clearly therefore this court recognised that notwithstanding the lack of express statutory provisions in the Act and the Rules, this did not affect the inherent jurisdiction of the court to intervene and provide redress even in respect of a winding up order that had been perfected and sealed.

[33] *Megah Teknik* has been applied by the High Court in the case of *Panaron Sdn Bhd v Univac Switchgear Sdn Bhd* [2015] 9 MLJ 498; [2015] 2 CLJ 286 ('Panaron'). Although the facts are completely different and do not relate to abuse of process, the fundamental position in law was recognised, namely that the court always retains a residuary power in its inherent capacity to intervene and remedy wrongs, particularly when there is an abuse of process.

[34] In this context, the case of *Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd* [1998] 1 MLJ 393 at p 409; [1998] 2 CLJ 75 at p 93 ('Badiaddin') midway from para f–h, Mohd Azmi FCJ stated as follows:

> ... The discretion to invoke the inherent jurisdiction should also *be exercised judicially in exceptional cases where the defect is of such a serious nature that there is a real need to set aside the defective order to enable the court to do justice*. In all cases the normal appeal procedure should be adopted to set aside a defective order, unless the aggrieved party could bring himself within the special exception.

[35] Although *Badiaddin* does not apply to a winding up petition, the principle to be gleaned from the said paragraph is of universal application.

[36] Therefore, we conclude that this court does indeed retain the inherent jurisdiction to permanently stay the winding up orders made by the Shah Alam High Court and we so order.

[37] Given our conclusion, we do not need to adjudicate on the issue of the definition to be accorded to 'contributory' in the Act.

[38] Alternatively, we consider that it is most prudent that the first and second respondents' claims that they are beneficial shareholders of the three companies in Suit 16/3 be determined prior to the presentation of winding-up petitions in respect of the three companies (see *Re Bambi Restaurants Ltd* [1965] 2 All ER 79, *Re JN2 Ltd* [1978] 1 WLR 183 and *Re Garage Door Associates Ltd* [1984] 1 All ER 434).

[39] We therefore dismiss the appeal and vary the order of the High Court so as to grant a permanent stay under the inherent jurisdiction of the court rather than under s 243(1) of the Companies Act 1965.

Appeal dismissed; order of High Court varied.

Reported by Dzulqarnain Ab Fatar